



March 16, 2005

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## ENGROSSED SENATE BILL No. 619

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DIGEST OF SB 619 (Updated March 15, 2005 10:45 am - DI 69)

**Citations Affected:** IC 4-21.5; IC 14-10; IC 25-17.6; IC 25-31.5.

**Synopsis:** Administrative hearings. Requires the office of environmental adjudication to: (1) review agency actions of the department of environmental management (IDEM) and certain actions of environmental rulemaking boards; and (2) conduct adjudicatory hearings required to implement agency action of IDEM. Provides that an environmental law judge (ELJ) is the ultimate authority for reviews of: (1) agency actions of IDEM; and (2) certain actions of environmental rulemaking boards. States the standards for removal of an ELJ or an administrative law judge (ALJ) of the natural resources commission. Provides for the appointment of a special ELJ or special ALJ.

**Effective:** July 1, 2005.

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**Gard**

(HOUSE SPONSOR — WOLKINS)

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January 24, 2005, read first time and referred to Committee on Energy and Environmental Affairs.

February 1, 2005, amended, reported favorably — Do Pass.

February 7, 2005, read second time, ordered engrossed.

February 8, 2005, engrossed. Read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

March 8, 2005, read first time and referred to Committee on Environmental Affairs.

March 15, 2005, amended, reported — Do Pass.

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ES 619—LS 7972/DI 52+



March 16, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 619

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 4-21.5-7-3 IS AMENDED TO READ AS  
2       FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) The office of  
3       environmental adjudication is established to review, under this article,  
4       ~~decisions agency actions~~ of the ~~commissioner of the~~ department of  
5       environmental management, **actions of a board described in**  
6       **IC 13-14-9-1, and challenges to rulemaking actions by a board**  
7       **described in IC 13-14-9-1 made pursuant to IC 4-22-2-44 or**  
8       **IC 4-22-2-45.**

9       (b) The office of environmental adjudication shall:

10       (1) conduct adjudicatory hearings required to implement:

11           (A) air pollution control laws (as defined in IC 13-11-2-6),  
12           water pollution control laws (as defined in IC 13-11-2-261),  
13           environmental management laws (as defined in  
14           IC 13-11-2-71), and IC 13-19; ~~and~~

15           (B) rules of:

16           (i) the air pollution control board;  
17           (ii) the water pollution control board;

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(iii) the solid waste management board; and

(iv) the financial assurance board; and

**(C) agency action of the department of environmental management; and**

(2) notify a board referred to in subdivision (1)(B) of a final order of the office of environmental adjudication that interprets:

(A) a rule of the board; or

(B) a statute under which a rule of the board is authorized.

SECTION 2. IC 4-21.5-7-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. An environmental law judge is the ultimate authority under this article for reviews of ~~decisions~~ **agency actions** of the ~~commissioner~~ **department** of environmental management, **actions of a board described in IC 13-14-9-1, and challenges to rulemaking actions by a board described in IC 13-14-9-1 made pursuant to IC 4-22-2-44 or IC 4-22-2-45.**

SECTION 3. IC 4-21.5-7-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) An environmental law judge hired after July 1, 1995, and the director must:

(1) be attorneys admitted to the bar of Indiana;

(2) have at least five (5) years of experience practicing administrative or environmental law in Indiana;

(3) be independent of the department of environmental management; and

(4) be subject to all provisions applicable to an administrative law judge under this article.

(b) The director or an environmental law judge may be removed for cause under:

(1) this article;

(2) IC 4-15-2, **through application of the standards for removal for cause of a person in the state service (as defined in IC 4-15-2-3.8);** or

(3) applicable provisions of the code of judicial conduct.

**(c) The director may appoint a special environmental law judge. The special environmental law judge must meet the requirements of subsection (a).**

SECTION 4. IC 14-10-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. **(a)** The commission shall appoint administrative law judges. An administrative law judge:

**(1) is subject to IC 4-15-2; and**

**(2) may be removed for cause under:**

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(A) IC 4-21.5;

(B) IC 4-15-2, through application of the standards for removal for cause of a person in the state service (as defined in IC 4-15-2-3.8); or

(C) applicable provisions of the code of judicial conduct.

(b) The commission shall create a division of hearings. The division of hearings shall assist the commission in performing the functions of this section. The director of the division of hearings may appoint a special administrative law judge.

(c) A person who is not appointed by:

(1) the director of the division of hearings; or

(2) the commission;

may not act as an administrative law judge. ~~The commission may create a division of hearings to assist in performing the functions of this section.~~

SECTION 5. IC 25-17.6-9-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. If requested, an administrative review of a determination made by the board under IC 25-17.6-3-7, IC 25-17.6-4, or IC 25-17.6-8-1 shall be conducted before an administrative law judge appointed by the natural resources commission **or the director of the division of hearings** under IC 14-10-2-2.

SECTION 6. IC 25-31.5-9-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. If requested, an administrative review of a determination made by the board under IC 25-31.5-3, IC 25-31.5-4, or IC 25-31.5-8 shall be conducted before an administrative law judge appointed by the natural resources commission **or the director of the division of hearings** under IC 14-10-2-2.

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## COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill No. 619, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 4, delete "orders" and insert "**agency actions**".

Page 2, line 9, strike "decisions" and insert "**agency actions**".

and when so amended that said bill do pass.

(Reference is to SB 619 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 6, Nays 0.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Environmental Affairs, to which was referred Senate Bill 619, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 5, delete "." and insert ", **actions of a board described in IC 13-14-9-1, and challenges to rulemaking actions by a board described in IC 13-14-9-1 made pursuant to IC 4-22-2-44 or IC 4-22-2-45.**".

Page 2, line 10, delete "." and insert ", **actions of a board described in IC 13-14-9-1, and challenges to rulemaking actions by a board described in IC 13-14-9-1 made pursuant to IC 4-22-2-44 or IC 4-22-2-45.**".

and when so amended that said bill do pass.

(Reference is to SB 619 as printed February 2, 2005.)

WOLKINS, Chair

Committee Vote: yeas 11, nays 0.

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